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1947.

File No: O. Irrigation 47

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Legal DEPARTMENT

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Subject:— Opinions under the Bombay Irrigation Act, 1879

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R.L. No 11452/16-12-46

In opinion No.4167, dated the 5.6.1946, the R.L.A. inter alia opined as follows:-

"Both the Superior Holder and his tenant in an alienated village would be owners within the meaning of section 2(3) and liable to take water on being directedunder section 7(b). If the tenant alone supplies under section 27 of the Bom. Irrigation Act, 1879, the supply of water cannot be withheld on the ground that he has failed to obtain the security of his Superior Holder. In such cases the Superior Holders would not be liable and to that extent the view taken by the Commissioner, C.D. is correct. But this view that unless the Bombay Irrigation Act, 1879, is amendedthe collection of irrigation dues in such cases would be impossible does not appear to be correct. Under section 57 of the Bombay Irrigation Act the arrears of water rate are recoverable as arrears of Land Revenue. Under section 153 read with section 187 of the Land Revenue Code an alienated holding for which arrears is due can be forfeited. Consequently, if the tenant fails to pay the water rate, there appears no legal objection to enforcing payment thereof by having recourse to section 153 of the Land Revenue Code. Consequently, no amendment of the Bom. Irrigation Act, appears necessary."

The Commr. C.D., who wasinformed in the above terms in P.W.D. letter No.6661/36-I, dt. 23.8.1946, observes thus:-

"It seems that Govt. has in this case taken the view that if an irrigator fails to pay water rates,

payment can be enforced by having recourse to section 153 L.R.C. i.e. by forfeiting the land of the defaulting irrigator. This is, it is submitted, not the case. As irrigation dues are not land revenue the the provisions of section 153 L.R.C. do not apply to the recovery of them There is nothing in the B.I.C. R. Act, 1944, which alters this position, the orders in para 4 of the Govt. letter under reference, therefore, appear to require revision."

The P.W.D. office holds that the Commr.'s argument that the provisions of section 153 of the Bom. Revenue Code do not apply to the recovery of the water-rate arrears does not hold good, and that the orders do not require revision. The R.L.A. is, however, requested to state whether the P.W.D. view is correct.

Para 2 of section 57 of the Bom. Irrigation Act, 1879, enacts that any water-rate leviable under the Act or instalment of the same which is not paid on the day when it becomes due, and any sum due to the Provl. Govt. or to a Canal Officer, whether on behalf of the Provl. Govt. or of any other person under Pt. III which is not paid when demanded, shall be recoverable according to the law and under the rules for the time being inforce for the recovery of land revenue. Under this section water-rate which has become due to Govt. and has not been paid can be recovered by the same process of law as employed for the recovery of arrears of land revenue. Under section 150 of the Bom. Land Revenue Code, 1879, an arrear of land revenue may be recovered by the following process:-

(a) by serving a written notice of demand on the defaulter under section 152;

(b) by forfeiture of the occupancy or alienated holding in respect of which the arrear is due under section 153;

(c) by distraint and sale of defaulter's moveable property under section 154;

(d) by sale of defaulter's immoveable property under section 155;

(e) by arrest and imprisonment of the defaulter under section 157 and 158;

(f) in the case of alienated holding consisting of entire villages, or shares of villages, by attachment of the said villages or shares of villages under sections 159 to 163.

As under section 157 of the Bom. Irrigation Act, 1879, the arrear of water rate is recoverable by the same process of law as arrears of land revenue, under the said section read with sections 153(b) and187 of the Bom. Land Revenue Code, an alienated holding in respect of which the arrear of water rate is due can be forfeited. There is no doubt that "irrigation dues are not land revenue" and there is nothing in the R.L.A.'s opinion No.4161, dt. 5.6.1946 to suggest any inference that irrigation dues are land revenue. All that sec.57 of the Bom. Irrigat ion provides is that the arrears of water rate are recovereble in the same manner any by the same process of law as arrears of la nd revenue. That being the legal position the view expressed in R.L.A.'s opinion 4167, dt. 5.6.1946 does not require to be revised -

Reply may be-

"Seen and returned.

The view expressed in the P.W.D. office note dt.12.12.1946 at pages 3-4 ante is correct."

Id. G.E. 14.6.

A.L.R. I agree A may be the reply Id. R.T.K.15.6

R.L.A. Id.M/16.6. U.o.r. to p.w.d. No. 8217 dt. 16.6.1947